

Nos. 21752 and 21752A

IN THE

United States Court of Appeals
FOR THE NINTH CIRCUIT

No. 21752

SUPER MOLD CORPORATION, a corporation,
Appellant,

vs.

CLAPP'S EQUIPMENT DIVISION, INC., a corporation,
Appellee.

No. 21752A

CLAPP'S EQUIPMENT DIVISION, INC., a corporation,
Appellant,

vs.

SUPER MOLD CORPORATION, a corporation,
Appellee.

**BRIEF OF APPELLEE, CLAPP'S
EQUIPMENT DIVISION.**

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**BRIEF OF APPELLEE, CLAPP'S
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Introduction.

In these appeals, plaintiff-appellant (Super Mold herein) presents for review a judgment of the District Court granting defendant-appellee's (Clapp's Equipment herein) motion for summary judgment holding U.S. Patent No. 3,162,898, the single patent in suit, invalid because the alleged invention was in public use and on sale in this country more than one year prior to the date of application for patent. Clapp's Equipment

has appealed from the failure of the District Court to award it attorneys' fees.

The District Court found that there was no genuine issue as to any material fact [CT 325]. The findings of fact made by the District Court, and upon which it based its determination that the acts prior to the critical date were invalidating under 35 U.S.C. Sec. 102(b), are unchallenged by Super Mold in its brief. It could hardly be otherwise, since these findings are predicated upon Super Mold's own documents, its own admissions and answers to interrogatories, and the deposition testimony of its own officers.

Against the extensive contemporaneous documentation and other evidence in this record showing nothing less than conspicuous commercial transactions in the patented assembly prior to the critical date, Super Mold in its arguments pits the present statement by the inventor, now Super Mold's president, of his subjective motivation at the times the acts took place. It asks this Court to treat this present statement of motivation, standing alone, as determinative of the nature of the acts at issue, irrespective of the quality of the other evidence in the record. Alternatively, it asserts that, because the inventor now states that his motivation in selling about 250 of the patented apparatus for over \$40,000 was for experimental purposes, this of itself creates a genuine issue of fact.

It is a purpose of this brief to show that, based upon the totality of the undisputed material evidentiary facts in this record, the District Court correctly determined that the conduct prior to the critical date involved invalidating public and commercial acts which had as their purpose commercial exploitation of the later patented

apparatus. It is a further purpose of this brief to show that the commercial activity prior to the critical date, the facts of which were all known to Super Mold prior to its institution of this suit, was of such a magnitude that there could not have been any reasonable belief in the validity of the patent when the suit for patent infringement was instituted. Therefore, the case is an exceptional case within the meaning of 35 U.S.C. Sec. 285, justifying an award of reasonable attorneys' fees.

Statement of the Case.

The Questions Presented.

As to the appeal taken by Super Mold, the questions presented are:

1. Is there any genuine issue as to any material evidentiary fact?
2. From the totality of the evidence in the record, was the District Court correct in concluding that the activities prior to the critical date of October 29, 1958 with respect to uses and sales of the later patented apparatus placed the alleged invention in public use and on sale in this country more than one year prior to the date of application in the United States and therefore invalidated the patent under 35 U.S.C. Sec. 102(b)?

As to the appeal taken by Clapp's Equipment, the question presented is:

1. With full knowledge of the facts of record, was not Super Mold's conduct in instituting a suit based upon the patent at issue so unreasonable as to make this an exceptional case justifying the award of attorneys' fees?

The Patented Subject Matter.

The application on which the patent in suit issued on December 29, 1964 was filed in the U.S. Patent Office on October 29, 1959 in the name of Louis T. Fike as inventor. The application was assigned to Trutred Tire Molds, Inc. (Trutred herein), a company of which Mr. Fike was General Manager and Vice President from 1952 to 1960. In 1960, Trutred was purchased by Super Mold and the patent application was assigned to Super Mold. Mr. Fike became General Manager of the Trutred Division of Super Mold at the time of the acquisition and has continued with Super Mold since that time. In January 1964, Mr. Fike became President of Super Mold [Fike Depo.: pp. 3-5].

As shown and described in the Super Mold brief (pp. 6-10), the claimed apparatus of the patent in suit is a tire retreading apparatus which is used to provide new treads in worn tires, a procedure commonly referred to as "recapping". The subject matter which was patented was an apparatus consisting of the combination of a tire retreading mold and a specified type of tire bead aligner or tread aligner. There is no dispute that the activities of Trutred prior to the critical date involved the same apparatus as that claimed in the patent, since Super Mold has admitted this to be the case.

The Activities of Trutred Prior to the Critical Date.

Since the application on which the patent in suit issued was filed on October 29, 1959, the critical date under 35 U.S.C. Sec. 102(b) is October 29, 1958.

In April and May, 1958, Trutred installed and operated two prototypes of the patented apparatus at the

retreading plant of Sears Roebuck and Company (Sears herein) in Los Angeles and was paid by Sears for at least one of the prototypes. Then, pursuant to a Sears purchase order issued in June, 1958, Trutred delivered about 250 of the patented apparatus to seven Sears tire retreading plants in various parts of the country and was paid over \$40,000 for the sale. In addition, Trutred advertised the patented apparatus in trade journals, exhibited the patented apparatus at a trade convention at which its operation was demonstrated and prices for its purchase were quoted, and offered one of the patented apparatus as a door prize at the trade convention.

Each of the events summarized above occurred prior to the critical date. Super Mold has admitted that the apparatus involved in each of these events was the same apparatus as that claimed in the patent. As will be discussed in the argument of this brief, the prototype use and sale, the \$40,000 sale to Sears, and the advertising and exhibiting activities separately constitute invalidating acts under 35 U.S.C. Sec. 102(b). In combination, they reveal an unmistakable pattern of commercial exploitation.

*Trutred's Activities Prior to
the \$40,000 Sale to Sears.*

Trutred had since 1952 been in the business of manufacturing retreading equipment including molds [Fike Depo.: p. 5]. One of its important customers was Sears. Trutred sold molds for tire retreading to plants which did retreading of tires for Sears stores. Because the acquisition of such equipment constituted a significant capital expenditure, equipment for such retreading plants, which were located in various parts

of the country, was purchased and paid for by Sears. Mr. H. A. Barron of Sears acted in a liaison capacity between Sears and the retreading plants. As to Mr. Barron's function, Mr. Fike testified as follows [Fike Depo.: pp. 15-16]:

“Q. Who made the decision as to what equipment was to be installed? A. I am sure Mr. Barron had something to do with it. It basically would be whether the plants desired it and whether it was satisfactory for what they needed done.”

As of about 1957, somewhere between 200 and 250 Trutred molds were in operation at the various retreading plants supplying Sears stores [Fike Depo.: p. 17].

Mr. Fike testified that in early 1958 retreading of lighter tire casings encountered a problem of crooked treads [Fike Depo.: pp. 12-13]. In this connection, Trutred had in 1957 supplied to Sears early versions of bead aligners for use in Trutred molds at the Sears plants [Fike Depo.: pp. 18-22; Exs. 6, 7, 8, CT 203-205]. Because of the continuing problem of crooked treads, Sears in February 1958 solicited bids from various companies for installation of bead aligners in its retreading molds. Mr. Fike testified as follows with respect to this solicitation by Sears [Fike Depo.: pp. 23-24]:

“Q. Did you know that in the beginning of 1958 Sears requested bids for installation of bead aligners in approximately 250 molds used in Sears' retreading shops? A. Yes. ,

Q. How were you made aware of that? A. They were trying to find an answer to the crooked tires they were running, and we weren't coming

up with one very fast, so they attempted to go on the outside.

Q. Did this result in your activity in the development of the bead aligner which is shown in Exhibit G? . . . A. I don't really know. I just know that for some period of time they were having a problem, just as the industry was, and we were trying different devices to try to cure the problem. And finally there were some other devices on the market at that time that people were advertising, and they went out and requested bids to see if they could get something to cure the problem because we weren't getting there very fast.

Q. Were you concerned that if you did not provide the requested 250 bead aligners Sears would use other bead aligners in the molds provided by you? A. Yes, sir. We were very much concerned about Sears buying anything except from us."

Clapp's Equipment was a company from which Sears solicited a bid for 250 bead aligners in February 1958. In a letter of February 12, 1958 from Mr. H. A. Barron of Sears to Clapp's Equipment [Ex. J, CT 169], Mr. Barron stated:

". . . Within the near future we plan to purchase 250 bead aligners for our various sources throughout the country. We would like to know if you have a representative in the Chicago area or if not, if you would be interested in submitting a quotation for your bead aligner on a quantity basis."

Mr. Fike testified that beginning about April 1958 he made prototypes of the retreading apparatus claimed

in the patent in suite. Two of these prototypes, one identified in his testimony as Unit No. 1 and the second as Unit No. 2, were operated at the retreading plant for Sears in Los Angeles [Fike Depo.: pp. 24-25]. Sears was invoiced by Trutred for payment for Unit No. 2 of the patented apparatus [Fike Depo.: p. 27]. This unit was, during May 1958, operated by the shop people at the point to retread tires. No reports on its operation were made by the shop people to Mr. Fike. The latter had free access to the unit and made whatever changes he observed to be needed [Fike Depo.: pp. 14, 29].

Following the work with Unit No. 2 at the Los Angeles retreading plant, Sears issued a purchase order dated June 16, 1958 to Trutred for 248 of the patented apparatus [Ex. 14, CT 211]. This purchase order is reproduced as Appendix A to this brief.

The \$40,000 Sale to Sears.

Mr. Fike's own testimony as to the purchase of 248 of the patented apparatus by Sears was as follows [Fike Depo.: p. 31]:

“Q. Now, the date of that purchase order is June 16, 1958. Can you give me the background of what led to that purchase order following the use of Unit No. 2 at Anderson Tires? A. As best as I can recall, it goes something like this. I would have told Jack Koplín that it looks like we are on the right track to curing the problem, and Jack would have gone from there to Sears. Now, sometimes I talked to Herb (Barron) at various times but pretty well officially talked through Jack.” (Parenthetical Note Added).

and further testified [Fike Depo.: pp. 32-33] as follows:

“Q. Why did you accept this purchase order to deliver 248 tread aligners to Sears as of June, 1958? Was it because you were going to be paid for it? A. Well, certainly.

Q. It was a commercial transaction, was it not? A. I guess all our actions with Sears could be commercial transactions, I suppose.

Q. And that included this particular one? A. Well, we received this purchase order from Sears and proceeded to try to equip the molds that basically were our molds, since they were in essence our account, with an item that we hoped would accomplish the job.”

The Sears purchase order was transmitted to Trutred by Mr. Barron's letter dated June 17, 1958, which included the following paragraph [Ex. 9, CT 206]:

“As we discussed by phone last Friday I would like you to exert every effort to have aligners ready for shipment to meet our initial requirements. I am very anxious to have aligners at our various shops when the new traction matrices arrive. As you know there is a great deal of pressure to get 14" Traction tires at the earliest possible date and I think we both agree that we do not want the lack of bead aligners to contribute to a delay in production.”

Mr. Fike acknowledged the order in a letter of June 18, 1958 to Mr. Barron and requested that inventory information as to the various plants be rushed to him so that Trutred could proceed with the Sears order

[Ex. 16, CT 213]. Trutred issued a formal Acknowledgment of Order, dated August 5, 1958 [Ex. 15, CT 212], giving a unit price of \$225 per unit before commercial and quantity discounts and a unit price of \$162 per unit after discount, the total cost being shown as \$40,176. The Acknowledgment of Order, which is reproduced as Appendix B to this brief, included a shipping schedule which stated: "Starting 8-11-58, 8 units per day, progressing to 20 per day until completion of order."

In fulfilling the Sears purchase order, Trutred began deliveries of the patented apparatus on July 30, 1958 and continued making shipments until the order was completed on November 5, 1958. All but six of the ordered quantity of 248 units were shipped by Trutred prior to the critical date. Following each shipment, Trutred issued invoices for payment by Sears, with a total of thirty-seven invoices being issued [Ex. F-1 through F-37, CT 221-257]. These invoices show, for example, that on August 21, 1958 twenty-five bead aligners were shipped, five each being sent to Sears plants at Seattle [Ex. F-3, CT 223]; Newark, N.J. [Ex. F-4, CT 224]; Chicago [Ex. F-5, CT 225]; Akron, Ohio [Ex. F-6, CT 226]; and Camden, N.J. [Ex. F-7, CT 227]. Additional shipments were subsequently made to these plants, as well as to the Sears plants at Dallas, Texas and Los Angeles, until the requirements of each plant were met. A representative invoice [Ex. F-12, CT 232] is reproduced as Appendix C to this brief.

Sales taxes were included for each sale to the Los Angeles plant and, as to the out-of-state shipments, each invoice stated: "No tax—out of state." Payment

for the apparatus was made by Sears prior to the critical date [Answer to Interrogatory No. 1(d), CT 177].

The bead aligners shipped by Trutred were installed in full capping retreading molds at the retreading plants for Sears stores. Mr. Fike testified that these units as delivered were used for commercial retreading of tires at these plants [Fike Depo.: p. 45].

Mr. Fike testified that modifications were made in some elements of the apparatus shipped to Sears pursuant to the above-described purchase order. These modifications were either as to size of elements of the patented apparatus, such as the upper and lower bead wheels, the piston rod, and the iron hub, or of the material of construction of these elements. He testified further that with the elements in the apparatus as delivered, the apparatus was operable to retread tires and was so used [Fike Depo.: pp. 35-43; 45-46]. It is undisputed that these changes in the patented apparatus made after the deliveries to the various Sears plants were not described and claimed in the patent. The apparatus delivered to Sears by Trutred was the very same as described and claimed in the patent, as was clearly brought out by the District Court at the hearing on the motion for summary judgment in the following colloquy between the Court and Super Mold's counsel, Mr. Utecht [Reporter's Transcript p. 21]:

“The Court: Let me understand you. Is there any dispute that the machines sold to Sears in the big sale involved the teachings that were finally incorporated in the patent? Not a different machine. It's the same machine.

Mr. Utecht: It's the same machine, same basic concept.

The Court: It did involve the teachings of the patent?

Mr. Utecht: That's right. . . ."

During the operation of the apparatus at the various Sears plants, no formal written reports were made to Trutred as to the operation of the apparatus [Answer to Interrogatory No. 1(f)(iii), CT 178]. Mr. Fike was informed by shop personnel in the event the apparatus broke down in operation [Fike Depo.: p. 46]. As to the bead aligners delivered to the Sears plants under the purchase order, no restriction of secrecy was placed upon Sears as to use or accessibility to the bead aligners [Answer to Interrogatory No. 11, CT 186].

Trutred's invoices which are in evidence show shipment of 133 units of the patented apparatus to seven Sears plants located in Los Angeles, Dallas, Seattle, Chicago, Newark, Akron, and Camden, New Jersey, during the month of August 1958 [Ex. F-2-F-20, CT 222-240]; shipment of 84 units to these various plants during the month of September 1958 [Ex. F-21-F-32, CT 241-252]; and shipment of 25 units to these various plants during the month of October 1958 [Ex. F-33-F-36, CT 253-256]. Between August 19, 1958 and November 5, 1958, therefore, Trutred shipped 248 units of the patented apparatus to the various Sears plants, for which units Sears was invoiced by Trutred and paid to Trutred \$40,176. It is this transaction which is now contended by Super Mold's president to have been for experimental purposes.

Trutred's Advertising and Demonstration of the Patented Apparatus to the Trade.

As the deliveries of the patented apparatus under the Sears purchase order were nearing an end, Trutred, prior to the critical date, embarked upon a campaign for the commercial promotion of the patented apparatus to the trade at large. It advertised the patented apparatus in issues of a trade publication, *Tire Battery and Accessory News*, in September, October, and November 1958 [Exs. 2, 3, and 4, CT 197-199]. In the September 1958 issue of the magazine [Ex. 1, CT 196], a listing of suppliers described Trutred's products as including "passenger mold with built-in bead aligner and tire ejector." In the October issue of this trade publication, the Trutred advertisement of the patented apparatus included the following statement: "Unconditional One-Year-Guarantee against defective material and workmanship." The page from the publication is reproduced as Appendix D to this brief. As to the purpose of these advertisements, Mr. Fike testified that it was intended to "attract attention to the unit" and that this purpose was accomplished by the advertisements [Fike Depo.: p. 55].

At the 38th Annual Convention of the National Tire Dealers and Retreaders held in Los Angeles October 11-October 15, 1958, Trutred was an exhibitor. Two of the patented apparatus, which in its October and November 1958 advertising were described by Trutred as "Star of the Show", were on display at the Trutred booth. Super Mold has admitted that the apparatus exhibited at the Trutred booth prior to the critical date incorporated the claimed elements of the patent in suit [Fike Depo.: p. 57]. The operation of these units

was demonstrated to show how the bead wheels were actuated by the cylinders. As to how the units were demonstrated, Mr. Fike testified as follows [Fike Depo.: p. 56]:

“Q. Did you staff the booth at the convention? A. Yes.

Q. Did you demonstrate the operation of the unit that is shown in Exhibit 2? A. I had an air line connected to the mold and would periodically work the device, but you couldn't demonstrate the total operation, no.

Q. You could not demonstrate the retreading itself? A. Oh, no.

Q. But insofar as the manner in which the bead wheels were actuated by the cylinders, was that demonstrated? A. Yes.”

During the prosecution in the Patent Office of the application from which the patent issued, the inventor had asserted that the nature of the actuation of the bead wheels by the cylinders (the power operated means) was the construction which differentiated the claimed apparatus from the prior art and which enabled performance of the sequence of operations described in the patent [Ex. E, CT 219]. In its answers to interrogatories, Super Mold described the nature of the demonstration at the convention as follows [Answer to Interrogatory No. 10(c), CT 186]:

“The mode of operation of said tread aligner was demonstrated insofar as possible without conducting an actual tire recapping operation.”

Prices for the displayed patented apparatus were quoted to visitors to the booth [Fike Depo.: p. 57]. In addition one of the patented apparatus was offered as a door prize at the convention [Ex. 5, CT 202].

**The Record as to Super Mold's Contention of
Experimental Use Prior to the Critical Date.**

In the extensive contemporaneous documentation of record in this case, there is found not a single reference to, or suggestion of, an experimental program. The Sears purchase order, the Trutred Acknowledgment of Order, and the thirty-seven invoices are completely devoid of any reference to such a program. This record also contains five letters from Mr. Barron of Sears to Mr. Fike, each referring to the purchase of the 248 tread aligners [Ex. 9, CT 206; Ex. 10; CT 217-218; Ex. 11, CT 207; Ex. 12, CT 208-209; Ex. 13, CT 210]. These letters refer to Sears need for the bead aligners; they provide delivery information; and they inquire as to Trutred's production. There is no reference whatsoever to any testing program.

This record also contains two letters from Mr. Fike to Mr. Barron, each referring to the Sears purchase. In his letter of June 18, 1958 [Ex. 16, CT 213], Mr. Fike thanked Mr. Barron for the order and requested inventory information so that Trutred could proceed with the order. In his letter of December 15, 1958 [Ex. 18, CT 215], after deliveries under the order had been completed, Mr. Fike summarized the basis upon which Sears had been invoiced. Again, no reference was made to the existence or results of any testing program.

As evidence of the claimed experimental program, Super Mold relies on statements by Mr. Fike in his affidavit filed in the District Court action as assertedly showing his motivation at the time of the Sears pur-

chase. Illustratively, it quotes the following from the affidavit [CT 272]:

“The sale and use of my tread aligners to Sears was a good faith use for experimental purposes and not a public use.”

and concludes from this (Super Mold Brief, p. 29):

“Thus, the intent of the inventor Fike to conduct an experimental program was clearly established.”

ARGUMENT.

There Is No Genuine Issue of Material Fact.

Super Mold argues that an unresolved question of fact existed, precluding granting of the motion for summary judgment, because the inventor now states that his motivation was experimental testing and not a public use. There is no dispute that the inventor now makes this statement as to his motivation in 1958 and, presumably, would repeat this statement if a trial were held. However, it is equally true that the facts of record summarized in the foregoing Statement of the Case, established through Super Mold, are unchallenged by Super Mold. There is therefore no dispute as to any material evidentiary facts.

What was done by the District Court was to measure against the present statement of the inventor as to his past motivation, the other facts of record. In doing so, the District Court applied the criteria applicable to the resolution of the ultimate fact, namely, whether or not the prior sales and uses were experimental, on the basis set forth in *Cataphote Corp. v. De Soto Chemical Coatings, Inc.* (9th Cir. 1966), 356 F. 2d 24, at p. 26:

“The determination of whether appellant’s activities prior to the critical date were merely experimental or were of the kind set out in section 102(b) is a matter left for the consideration of the trier of fact. The resolution of this question depends principally upon a careful examination of each item of evidence and an evaluation thereof to judge the nature and purpose of the course of conduct of the purported patent holder. . . . The resolution of the sole issue raised regarding section 102(b) depends entirely on a determination, from

the totality of evidence presented by both parties, of the nature of the acts committed prior to the critical date and the purpose that motivated the commission of those acts. To the extent that issues can be accurately characterized as solely questions of law or fact, the crucial issue involved in this controversy is an issue of fact.”

With no need for proof beyond the record already made and no material evidentiary fact in dispute, summary judgment was the appropriate procedure. *Park-In Theatres v. Perkins* (9th Cir. 1951), 190 F. 2d 137, 142. The District Court then, from the totality of the evidence, correctly determined that the Trutred activities prior to the critical date were of the kind prohibited by 35 U.S.C. Sec. 102(b).

The Totality of the Evidence Fully Shows That the Acts of Trutred Prior to the Critical Date Constituted Commercial Exploitation and Not Merely Experimentation.

In its brief, Super Mold attacks the decision of the District Court on the basis “The District Court, however, ignored the inventor’s motivation as set forth in his affidavit and substituted therefor the District Court’s feeling as to what it assumed was the inventor’s motivation.” (Super Mold Brief, p. 29). Super Mold would have had the District Court, without consideration of all of the other items of evidence of record, determine the issue solely on the basis of the inventor’s present self-serving conclusion as to what his motivation was in 1958. To have followed such a course would have been contrary to the above-expressed criteria for resolution of this issue laid down by this Court

in the *Cataphote* case, *supra*. The District Court correctly considered the totality of the evidence in reaching its conclusion that to sustain the validity of the patent at issue in the light of the Trutred activities of record would result in a circumvention of both the terms and policy of 35 U.S.C. Sec. 102(b).

The record shows that Trutred, concerned because Sears had solicited in early 1958 bids from other companies for tire bead aligners, built prototypes of the patented apparatus in April and May 1958, and tested them at the Los Angeles retreading plant for Sears stores. At least one of these prototypes (Unit No. 2) was paid for by Sears. A comparable use of a prototype of itself was held to constitute an invalidating competitive activity under 35 U.S.C. Sec. 102(b) in *Koehring Company v. National Automatic Tool Company* (7th Cir. 1966), 362 F. 2d 100.

In the present case, the commercial exploitation went far beyond that in the *Koehring* case. The use of the patented apparatus at the Los Angeles retreading plant involved a period of about two months. In his affidavit, Mr. Fike stated as follows with respect to the work with the prototype at the Los Angeles plant [CT 271]:

“ . . . Based upon the results of such preliminary testing, I believed that the basic inventive principle was correct and in June 1958 I informed Sears of this fact.”

Thereafter, Sears issued its purchase order for 248 of the patented apparatus at a cost in excess of \$40,000.

By this order, Sears outfitted its seven retreading plants located in Los Angeles, Chicago, Dallas, Akron,

Seattle, Camden, and Newark with the patented apparatus. Mr. Fike, in explaining this order, stated in his affidavit that “At this time I realized, however, that it would be necessary to conduct further research and development before my bead aligner could become a commercially useable product” and that he accepted the Sears order “In order to expedite the completion of such research and development work . . .” [CT 271].

The implausibility of the proposition that a company such as Sears would, following work with two prototypes at one of its plants, proceed to order 248 of the same apparatus at a cost of \$40,000 to equip all seven of its retreading plants scattered over the country if the ordered apparatus were not already “a commercially useable product” is apparent from its mere statement. In *National Biscuit Co. v. Crown Baking Co.* (1st Cir. 1939), 105 F. 2d 422, the Court was faced with the explanation that the delivery of patented machines was merely for experimental purposes, albeit that the magnitude of the transactions was far less than found in the present case. After noting (p. 424) that “A machine, however, may be commercially operable, although defects appear in the production, which is not due to fundamental defects and may be eliminated,” the Court said at page 424:

“‘. . . To say that the Atlantic Cone Company urgently desired a second inoperative machine, or that it thought to make things meet with two uncommercial machines instead of one, is somewhat fantastic.’”

and, further, at page 425:

“While waiting for delivery of more machines, the Werlins themselves or the Atlantic Cone Com-

pany expended over \$8,000 on two new machines in substantial duplication of the 1920 McLaren machine. It is inconceivable that so large an expenditure was incurred by them or this company to produce commercially useless machines.”

A transaction of the magnitude of the Sears transaction, following as it did a period of testing of the same apparatus at one of its retreating plants, is irreconcilable with a claim today that it was part of some experimental program. Additional refutation of such a claim is furnished by the absence of any suggestion of such a program in the documents of record as to this transaction.

Even if, as Mr. Fike contended in his testimony, Trutred desired some additional testing of the patented apparatus after the testing of the prototypes at the Los Angeles plant, the activities of Trutred clearly demonstrate that such testing was subordinate to the commercial motivation of the sales. A bona fide experimental program would not have required that every Trutred mold at the seven Sears plants across the country be outfitted with the patented apparatus. It would have involved neither sales of this magnitude nor application of trade and quantity discounts to the list prices. It would have involved systematic reports as to operation, not merely a request that Sears personnel report any trouble to Mr. Fike [Answer to Interrogatory No. 1(f)(ii), CT 178]. The latter is nothing more than sound customer relationship. The patented apparatus was delivered to the various Sears plants without any restrictions by Trutred as to use or accessibility to the apparatus.

As to 35 U.S.C. Sec. 102(b), this Court, in the *Cataphote* case, *supra*, stated (356 F. 2d at p. 25):

“. . . The express purpose of this statutory provision was to prevent the extension of the monopoly period permitted by the patent laws by requiring an inventor to make timely application so that the patent period might commence to run without undue delay. . . .”

In the *Koehring* case, *supra*, the Court considered the limitations upon permissible bona fide experimental use in view of the policy consideration underlying 35 U.S.C. Sec. 102(b), stating (362 F. 2d at pp. 103-104) as follows:

“A reasonable period of experimentation wherein the inventor may perfect what he has conceived has long been acknowledged as an exception to the requirement of seasonable disclosure. But this exception must be recognized as such; it must be so limited as not to interfere with the effectuation of the policy underlying the general rule of early disclosure. An inventor may not be permitted to use a period of experimentation as a competitive tool. ‘The use [of an invention] ceases to be experimental when the motivation of the inventor is to exploit the invention and gain a competitive advantage over others.’ *Solo Cup Co. v. Paper Mach. Corp.*, 240 F.Supp. 126, 131, (E.D. Wis. 1965).”

The policy of the statute cannot be thwarted because at the back of the inventor’s mind he hoped by exploitation to gain more knowledge as to the extent of his success. *Aerovox Corporation v. Polymet Mfg. Corporation* (2nd Cir. 1933), 67 F. 2d 860, 862.

The facts of record in this case show a program of product introduction and sales promotion that is consistent only with a stage of product development well beyond the experimental. Mr. Fike's own statements, the contemporaneous documentation as to the transaction between Trutred and Sears, and the surrounding circumstances demonstrate an activity that is typical of "a trader's, and not an inventor's, experiment." *Cataphote Corp. v. De Soto Chemical Coatings, Inc.*, *supra* (356 F. 2d at p. 27). Such activity is that prohibited by the statute and invalidates the patent.

The Modifications Made After the Sales of the Patented Apparatus Did Not Change the Commercial Character of Trutred's Activities.

The changes made in the patented apparatus after the deliveries to the various Sears retreading plants were essentially in size and in the material of construction of the component parts. The patent application subsequently filed did not describe and claim these changes. It did describe and claim the apparatus as delivered to Sears, demonstrating that the changes made after delivery did not involve the substance of the patent.

The fact that some changes were required to improve the apparatus sold does not change the commercial character of the transaction with Sears. As said by the Court in *Smith & Griggs Mfg. Co. v. Sprague* (1887), 123 U.S. 249 at page 265:

"... That it was capable of improvement need not be denied, nor that, while it was in daily use, its owner and inventor watched it with the view of devising means to meet and overcome imperfections in its operation; but this much can be said in every such case. . . ."

As early as 1891, in *International Tooth Crown Co. v. Gaylord*, 140 U.S. 55, 62-63, it was held that the invalidating effect of a public use or sale by an inventor was not avoided by subsequent changes which were such as would occur to one having ordinary skill in the field to which the patent relates. The Court said (p. 62):

“. . . There is a multitude of cases in this court to the effect that something more is required to support a patent than a slight advance over what had preceded it or mere superiority in workmanship or finish. . . .”

In that case, the patent in suit described and claimed the change by which it was unsuccessfully sought to escape the statutory prohibition. In the present case, the failure of the patentee to describe and claim these changes of itself shows that these were not considered of patentable significance.

The rule laid down in *International Tooth Crown Co. v. Gaylord*, *supra*, has been consistently followed, a recent expression of it by the Ninth Circuit being in *Tool Research & Engineering Corp. v. Honcor Corp.* (9th Cir. 1966), 367 F. 2d 449. At page 454, after considering *Smith & Griggs Mfg. Co. v. Sprague*, *supra*, and concluding that not every improvement is sufficient to take prior invention out of the operation of 35 U.S.C. Sec. 102(b), this Court stated:

“. . . In either case the invention should fall within 102(b) if the differences between the claimed thing and the sold or used thing are obvious to one skilled in the art. In either case unless the improvements would be patentable, the inventor has used or disclosed his invention contrary to the purpose of Section 102(b).”

Where, as here, subsequent changes are not described and claimed in a patent but the apparatus as sold is described and claimed in such patent, the fact that changes were made becomes completely incidental to the application of 35 U.S.C. Sec. 102(b).

Trutred's Advertisements and Trade Show Demonstrations of the Patented Apparatus Are of Themselves Invalidating Public Uses and "On Sales" Under 35 U.S.C. Sec. 102(b).

As was described in the Statement of the Case, Trutred, prior to the critical date, advertised the patented apparatus in a trade magazine and exhibited, demonstrated, and quoted prices for the patented apparatus at a trade convention of the National Tire Dealers and Retreaders' Association (NTDRA). Trutred even offered the bead aligner of the patented apparatus as a door prize at the convention [Ex. 5; CT 202; Answer to Interrogatory No. 10(f), CT 185].

The foregoing activities, occurring as they did when deliveries under the Sears order were nearing completion, accentuate the scope of the program of commercial exploitation undertaken by Trutred prior to the critical date. Further, Trutred's acts at the NTDRA convention, of themselves, separate and distinct from the clearly commercial transactions with Sears, were invalidating public uses and on sales under 35 U.S.C. Sec. 102(b). A public use exists where the invention is used by, or exposed to, anyone other than the inventor or persons under an obligation of secrecy to the inventor. *Piet v. United States* (D.C.S.D. Calif. 1959), 176 F. Supp. 576, 584. This is what occurred at the Trutred exhibit booth. As stated in the often-

cited case of *Egbert v. Lippman* (1881), 104 U.S. 333 at page 336:

“. . . (W)hether the use of an invention is public or private, does not depend necessarily upon the number of persons to whom its use is known. If an inventor, having made his device, gives or sells it to another, to be used by the donee or vendee, without limitation or restriction, or injunction of secrecy, and it is so used, such use is public, within the meaning of the statute, even though the use and knowledge of the use may be confined to one person.”

The exhibition and demonstration of the patented apparatus at the convention were public uses within 35 U.S.C. Sec. 102(b).

Coupled with the exhibition and demonstration of the patented apparatus, the quotation of prices to prospective purchasers at the NTDRA convention separately placed the patented apparatus “on sale” under the statute. A completed sale, whether with or without delivery, is not demanded. *Tucker Aluminum Products, Inc. v. Grossman* (9th Cir. 1963), 312 F. 2d 293, 295; *Wende v. Horine* (7th Cir. 1915), 225 Fed. 501, 505; *Philco Corporation v. Admiral Corporation* (D.C. Del. 1961), 199 F. Supp. 797, 815. In *Akron Brass Company v. Elkhart Brass Manufacturing Co.* (7th Cir. 1965), 353 F. 2d 704, 709, the Court held that the following items, occurring prior to the critical date, of themselves provided the requisite clear and convincing evidence that the patented device, a nozzle, had been on sale within the meaning of Section 102(b):

(a) Demonstrations of the nozzle by the patentee's vice president in charge of sales, and possession of a nozzle by a dealer; and

(b) A brochure showing a picture of the nozzle and a price list, these being treated by the Court as the "most persuasive evidence."

The evidence as to the activities by Trutred at the NTDRA convention is fully persuasive that Trutred separately placed the patented apparatus on sale at that location.

The "Section 102(b)-Section 112 Dilemma" of Super Mold's Creation Has No Support in Law or Fact.

Although Super Mold now ingenuously professes that the inventor was placed between the "Scylla of 35 U.S.C. 102(b) and the Charybdis of 35 U.S.C. 112," the course between these mythical perils had been clearly charted by the statutory and decisional law long prior to 1958. Since the first Patent Act in 1790, the legislature and the courts have protected the public by requiring an inventor desiring to obtain the advantage of the patent monopoly to file his patent application as diligently as possible. Section 102(b) of the 1952 Patent Act (35 U.S.C.) is based on a history of legislation premised on this requirement. By requiring that the patent application be on file within one year of public use or on sale in this country, the section embodies the condition that the inventor act with speed in filing an application or his rights to a legal private monopoly will be barred. The rationale for the requirement that the inventor act with speed in filing the application was set forth in *Pennock and Sellers v.*

Dialogue (1829), 27 U.S. 1, 19, wherein Mr. Justice Story stated:

“. . . (T)here is much reason for the limitation thus imposed by the Act. . . . If an inventor should be permitted to hold back from the knowledge of the public the secrets of his invention; if he should for a long period of years retain the monopoly, and make, and sell his invention publicly, and thus gather the whole profits of it, relying upon his superior skill and knowledge of the structure; and then, and then only, when the danger of competition should force him to secure the exclusive right, and he should be allowed to take out a patent, and thus exclude the public from any farther use than what should be derived under it during his fourteen years; it would materially retard the progress of science and the useful arts, and give a premium to those who should be least prompt to communicate their discoveries.”

An inventor may not enjoy the best of two possible worlds and must content himself with secrecy or legal monopoly. *Koehring Company v. National Automatic Tool Company, supra* (362 F. 2d at p. 104). Where he selects the world of legal monopoly, the duty to the public of timely disclosure in compliance with the conditions imposed by law overrides whatever personal burden may be contended to be thereby imposed upon the inventor.

As to the requirements of 35 U.S.C. Sec. 112, so long as the patent discloses all of the essential functions of the commercial machine, it is not necessary that it disclose all the refinements of the production model. *Honolulu Oil Corporation v. Shelby Poultry*

Company (4th Cir. 1961), 293 F. 2d 127, 129. Mr. Fike was, in June 1958, in a position to meet these requirements. Nevertheless, he chose to ignore 35 U.S.C. Sec. 102(b).

That the “Section 102(b)-Section 112 dilemma” is an “afterthought” creation is shown by the illusory character of the reasons advanced by Super Mold in explanation of its asserted existence. This is demonstrable from Super Mold’s own contention that the “experimental program” ended in January 1959. This was five months earlier than the first year anniversary (May 1959) of the prototype sale and six months earlier than the first year anniversary (June 1959) of the Sears sale, so that the requirements of timely filing under 35 U.S.C. Sec. 102(b) could still easily have been met. Yet, the application was not filed until October 29, 1959.

The Cases Cited by Super Mold Demonstrate the Gross Difference Between Bona Fide Experimentation and Trutred’s Activities.

The factual situations in the three cases as to experimental use cited in the Super Mold brief (pp. 23-25) provide a compelling comparison between bona fide experimentation and the commercial activities of Trutred. As to *Universal Marion Corp. v. Warner and Swasey Co.* (10th Cir. 1965), 354 F. 2d 541, the facts upon which the District Court found good faith use for experimental purposes, which finding was affirmed by the Circuit Court (354 F. 2d at p. 545), are more fully set out in the District Court’s opinion (237 F. Supp. 719, 723-725).

In the *Universal* case, a single prototype earth-working machine was used before the critical date by the pat-

entees themselves on two construction jobs. In the first use, the machine was used for a total of two and one-half hours, and the Court pointed out that “. . . given the short duration of use, it clearly was not used for profit.” (237 F. Supp. at p. 725). The second use was longer, but the Court pointed out that it was used together with over thirty other pieces of construction equipment so that “. . . it is most unlikely that the machine was intended to do the bulk of the work.” Recognizing that the statute, 35 U.S.C. Sec. 102(b), was intended to prevent the inventor from extending the number of assured profit years beyond that provided by the statute (p. 724), the Court, as to the second use, pointed out “Nor is there any evidence that the use of the machine was a factor bargained for in letting the contract to the Ferwerdas.” (p. 725).

Merrill v. Builders Ornamental Iron Co. (10th Cir. 1952), 197 F. 2d 16, 19-20, involved, as to public use, a single machine located at the rear of the patentee's shop. Although in some instances charges were made for use of the machine (usually at about one-third of the regular rate), the patentee obtained the customer's permission “to try out the experimental model on the job in order to test it.”

In *Elizabeth v. Am. Nich. Pavement Co.* (1878), 97 U.S. 126, the inventor, at his own expense, placed a specimen of his pavement in a roadway to test the pavement in the only way it could be tested, namely, by allowing traffic over it for a period of time. However, in finding this use experimental, the Court carefully pointed out the particular circumstances which justified this conclusion, stating at page 136:

“Had the city of Boston, or other parties, used the invention, by laying down the pavement in other

streets and places, with Nicholson's consent and allowance, then, indeed, the invention itself would have been in public use, within the meaning of the law; but this was not the case. Nicholson did not sell it, nor allow others to use it or sell it. He did not let it go beyond his control. He did nothing that indicated any intent to do so. He kept it under his own eyes, and never for a moment abandoned the intent to obtain a patent for it."

In each of the above-discussed cases, no sale at all was made by the inventor. The inventor in each case retained direct control over the patented invention, and any financial return to him was incidental to the use for test purposes that was made. Single machines were involved in the uses made in the *Universal Marion Corp.* and the *Merrill* cases, and 75 feet of pavement was involved in the use made in the *Elizabeth* case. The exception to 35 U.S.C. Sec. 102(b) for bona fide experimental use that was found in these cases was under factual situations totally different from that shown to have existed in this case. To apply the rationale of these cases to the present factual situation would render 35 U.S.C. Sec. 102(b) meaningless.

This Case Is an Exceptional Case Which Justifies Award of Reasonable Attorneys' Fees to Defendant.

In making this appeal from the failure of the District Court to award attorneys' fees, Clapp's Equipment fully recognizes that the courts have applied the literal meaning of "exceptional" to cases in which attorneys' fees are sought under 35 U.S.C. Sec. 285, and that the award of such fees is an exercise of discretion. How-

ever, the equitable considerations that are here involved make it grossly unjust for Clapp's Equipment to bear the burden of counsel fees in the District Court and on this appeal.

In the District Court's letter of December 15, 1966 to counsel for both parties giving its decision following the hearing on the Motion for Summary Judgment, the Court, as to the issue of attorneys' fees, stated [CT 343]:

“On the question of attorney's fees, the invalidity of the patent based on the commercial activity antedating the application, seems so clear that prosecuting the instant action comes very close indeed to being bad faith on the part of plaintiff justifying the award of such attorney's fees. However, I have found no authority in this circuit for the awarding of attorney's fees where summary judgment has been granted. I have therefore determined to award no attorney's fees in this case. . . .”

Although no case decided by the Ninth Circuit in which the point has been specifically considered has been found, it is submitted that *Park-In Theatres v. Perkins, supra*, supports the propriety of the award where summary judgment has been granted, provided there are present the equitable considerations justifying the award. In that case, the District Court had held the patent claims invalid on defendant's motion for summary judgment and awarded attorneys' fees. This Court affirmed the judgment as to invalidity but set aside the award of attorneys' fees. The setting aside of the award was not because it had been made in conjunction with the grant of summary judgment, but was

because “. . . the district court did not impose a sufficiently strict standard in finding cause adequate to justify an allowance of attorney’s fees. . . .” (190 F. 2d at p. 143). In acting on the merits as to the award, *i.e.*, the adequacy of the findings, the Ninth Circuit approved, *sub silentio*, it is submitted, the propriety of the award on granting of summary judgment.

In *Park-In Theatres*, this Court also enunciated (at p. 142), the principles which should guide and control such an allowance as follows:

“‘. . . The provision is also made general so as to enable the court to prevent a gross injustice to an alleged infringer.’ 1946 U.S. Code Congressional Service 1386, 1387. Thus, the payment of attorney’s fees for the victor is not to be regarded as a penalty for failure to win a patent infringement suit. The exercise of discretion in favor of such an allowance should be bottomed upon a finding of unfairness or bad faith in the conduct of the losing party, or some other equitable consideration of similar force, which makes it grossly unjust that the winner of the particular law suit be left to bear the burden of his own counsel fees which prevailing litigants normally bear. . . .”

These same guiding and controlling principles were set forth in *Shingle Product Patents v. Gleason* (9th Cir. 1954), 211 F. 2d 437.

In the present case, there is no question that all of the facts before this Court were known to Super Mold before this action was instituted. Super Mold itself adduced them through the testimony of Mr. Fike taken in Interference No. 92,625 in order to show priority of

invention by Mr. Fike over the subject matter of an application owned by one Clement O. Dennis. Dennis then conceded priority but, significantly, Dennis, although in the position of a losing party, and a competitor in the tire retreading equipment business, was granted by Super Mold a *free, nonexclusive, irrevocable* license [Ex. K, CT 299-301] under the patent at issue.

After Super Mold gave Clapp's Equipment notice of infringement, counsel for Clapp's Equipment, prior to filing of the complaint in this action, presented the facts which are before this Court in a letter to Super Mold's counsel [Ex. G, CT 258].

Viewed with rigorous objectivity, the facts of record in this case unequivocally show a course of conduct prior to the critical date that is so violative of long-established statutory and decisional patent law as to leave no room for doubt as to the invalidity of this patent. The authorities cited herein show that even single aspects of Trutred's activities—such as the sale of the prototype, or its advertising coupled with the exhibition, demonstration, and price quotation as to the patented apparatus at a trade convention, would each separately raise grave doubts as to the validity of the patent. Taken in conjunction with the principal sale to Sears, the conclusion of invalidity is inexorably clear.

The Court is asked to measure the facts of record against the mandate laid down in *Smith v. Griggs Mfg. Co. v. Sprague, supra* (123 U.S. at p. 264), as to plaintiff's burden once it is shown that prior public uses and sales of the patented invention have occurred. Such proof should be "full, unequivocal and convincing." Super Mold's proof falls so short of meeting this burden that it would be grossly unjust for Clapp's Equipment to be left to bear the burden of its own

counsel fees. It is submitted that this case presents the type of equitable consideration to which this Court had reference in *Park-In Theatres v. Perkins*, *supra*, (190 F. 2d at p. 142), and that Clapp's Equipment should be awarded its attorneys' fees for the District Court action and this appeal. See *Tidewater Patent Development v. Kitchen* (4th Cir. 1967), 371 F. 2d 1004, 1013.

Conclusion.

The totality of the facts in this record fully attest to the correctness of the decision of the District Court in concluding that the activities by Trutred prior to October 29, 1958 invalidated the patent at issue under 35 U.S.C. Sec. 102(b). The judgment of the District Court as to the invalidity of the patent should be affirmed.

Moreover, this totality provides such unequivocal and convincing proof of invalidating acts that the institution of litigation under these circumstances amounts to nothing more than the exercise of a naked right. To sue under these facts was an abuse of that right and saddled Clapp's Equipment with an unjust hardship. Since it would be unjust that Clapp's Equipment be left to bear the burden of its own counsel fees in the District Court and on this appeal, it is submitted that this Court should exercise its discretion in favor of the allowance of such fees.

Respectfully submitted,

CHRISTIE, PARKER & HALE,
ANDREW J. BELANSKY,
JOHN F. POWELL,
*Attorneys for Appellee Clapp's
Equipment Division.*

Certificate.

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

ANDREW J. BELANSKY

APPENDIX A.



APPENDIX B.

CUSTOMER: Sears, Roebuck and Co.
925 South Homan Ave.
Chicago 7, Ill.

TIRE MOLDS INC.
1623 NADEAU
LOS ANGELES, CALIFORNIA
LU. 8-5228 LU. 8-5229

DATE August 5 1958
SHIP VIA As advised
TERMS Net - 10th. Prox.
ORDERED BY H. A. Barron
TAXABLE RESALE INTERSTATE
SALESMAN J. T. Fike

SHIP TO: Destinations will be advised

INVOICE TO: Sears, Roebuck and Co. as above

ITEM	QUANTITY	DESCRIPTION	PRICE	AMOUNT
1	248	Treated Trumatic bead aligners	\$225.00	
		Less 20%	45.00	
			180.00	
		Less 10% Quantity discount	18.00	
		Price each -	162.00	\$40,176.00
<p>SHIPPIN G SCHEDULE Starting 8-11-58, eight units per day, progressing to twenty per day until completion of order.</p> <p>8/19. 10 TO ANDERSON, L.A. - THEIR P.O. (20) INV. 909</p> <p><i>Quoted 11/15</i></p>				

DELIVERY SCHEDULE

ITEM NO.	1	2	3	4	5	6	7	8	9	10
REQUESTED										
WILL SHIP										

See above shipping schedule

FILE

APPENDIX C.

UNION

TIRE MOLDS

1623 NADEAU STREET
LOS ANGELES 1, CALIFORNIA
LUDLOW 8-3338
LUDLOW 8-0058

SOLD TO Sears Roebuck & Company
525 South Huron Ave
Chicago 7, Illinois

August 22, 1950

INVOICE NO. 00722
ORDER NO. _____
YOUR ORDER 8-22-50
SHIPPED 8-22-50
VIA Universal Carloading
F.O.B. Incidental

TERMS: Not 10th Prox.

SM 2-56 J2270

14	Crated Tri-Matic Road Molders	0	3225.00	\$	3,150.00
	Less 20% Discount				<u>645.00</u>
					2,505.00
	Less 10% Special Quantity Discount				<u>250.00</u>
					\$ 2,255.00

No tax - out of state

Shipped 8-22-50 by Universal Carloading to Anderson Tires, Inc.
2950 South Indiana
Chicago 16, Illinois

Bill of lading sent to destination.

8-17



APPENDIX D.

Gas Stations Average \$77.10 On TBA
Cash registers in auto service stations withing a year, the United States Rubber Co. reports.

"Ten years ago service station TBA business amounted to \$630 million, less than half of what it is today," said G. Raymond Cuthbertson, U.S. Rubber vice president and general manager of its tire division.

"Service stations today sell one-third of all the replacement passenger tires sold in this country, 36 per cent of all replacement batteries for passenger cars and 68 per cent of all the anti-freeze bought by American motorists," he revealed.

"Service stations are the largest single retail outlet for TBA items and promise to become an even more important factor with the continued growth of suburban areas and as more and more oil companies put complete TBA sales programs into effect at their stations," Mr. Cuthbertson declared.

Total TBA sales by all outlets are expected to amount to \$4.3 billion this year.

A gasoline sales outlet is classified as a service station if it does more than one-half of its total business in petroleum products. There are 183,000 service stations in this country. All of them sell some TBA products.

This year the average service station will sell 200,000 gallons of gasoline; 2,800 hours of lubrication and servicing, and \$7,718 worth of TBA products. The average service station will do most of this business with 242 regular customers.

According to a yardstick used by the industry, a service station will sell \$18.47 worth of new tires, retreads and tubes for every 1,000 gallons of gasoline sold.

The next biggest item is batteries, which add \$6.02 to the service station bill every time he sells 1,000 gallons of gas. Then come anti-freeze, \$4.17 per 1,000 gallons of gas; spark plugs, \$3.85; oil filters, \$2.29; fan belts, 68 cents; wiper blades, 65 cents, and on down the list to the smallest item—fuses, 4 cents.

Battery Men Meet October 30

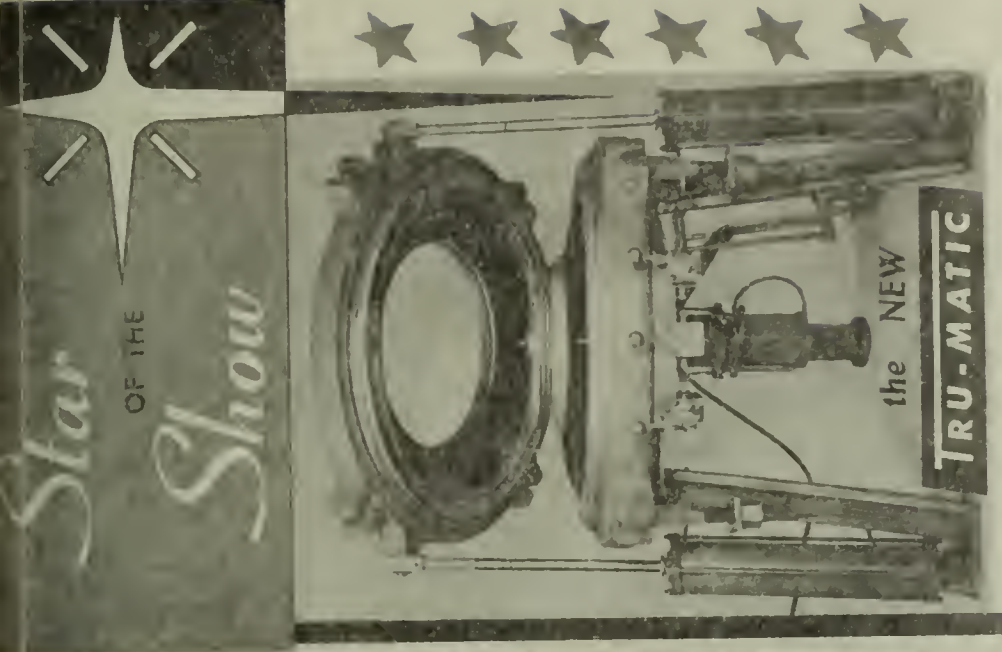
More than 500 executives from over 200 battery manufacturers and marketers will attend the Fall Meeting of the Association of American Battery Manufacturers on October 30, 31 and November 1 at the Palmer House, Chicago. The Association's President, D. Nevin Smith, Vice President of The Electric Storage Battery Company, will preside.

The program will cover all phases of the storage battery business, manufacturing, distribution and selling.

August Rubber Consumption Up

Consumption of new rubber in the United States for the month of August amounted to 109,859 long tons, as compared with the 98,100 long tons consumed during July.

Tire, Battery & Accessory News, October, 1958



PASSENGER MOLD with

Built-in Bead Aligner and Tire Ejector

Never a Crooked Tread

Fast — Velvet Smooth — Efficient

CHECK THESE FEATURES:

- Tire does not contact matrix until mold is closed and air pressure is applied.
- Tire is automatically ejected from matrix after the cure. (No extractor hooks needed)
- Fast, even heat (Large steam chambers)
- Four-inch cylinders attached to extra-heavy reinforced legs.
- Sliding hinge pins for quick changing of matrices.
- Unconditional One-Year Guarantee against defective material and workmanship.

BUILT TO ACCOMMODATE TRUTRED, American and Ace type Matrices

For More Information — WRITE, WIRE or PHONE:



TRUTRED TIRE MOLDS, INC.

16723 Hollywood Street • Los Angeles 1, Calif.

Ludlow 8-5228

